

EXHIBIT 3

Hunters Capital, LLC v. City of Seattle

Mayor Jenny A. Durkan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUNTERS CAPITAL, LLC, et al.,)

Plaintiff,)

vs.) No. 20-cv-00983

CITY OF SEATTLE,)

Defendant.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

UPON ORAL EXAMINATION OF

MAYOR JENNY A. DURKAN

Seattle, Washington

(All participants appeared via videoconference.)

DATE TAKEN: DECEMBER 8, 2021
REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

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1 (Pages 1 to 4)

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1 to the Department of Transportation to the Public
2 Utilities Department, to really be assessing at any one
3 time what the best way to balance all of those things
4 was, and to keep those first responders safe, those City
5 employees safe so that they could do their jobs.

6 And the overall goal for Seattle Department of
7 Transportation, the outset was to make sure that the --
8 because it was not possible to move all protesters out
9 immediately, and we'd seen a car drive into protesters,
10 to see if we could mitigate against that danger and, at
11 the same time, try to prevent ingress and egress for the
12 residents and businesses and visitors to Capitol Hill.

13 And then, you know, over time to try to move
14 and reduce the profile of that so we could get to the
15 point where the Seattle Police Department felt it could
16 be successful in an operation to move people out of the
17 CHOP.

18 That took -- it was a very dynamic situation
19 that changed daily, depending on not what was just going
20 on there, but what was going on externally, and who
21 was -- and who might visit the -- the area on Capitol
22 Hill.

23 So I think that, you know, if you have a
24 particular thing that they did, I'd be happy to talk
25 about it, but I do know that they, working together with

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1 the other departments, were really on an ongoing basis
2 trying to assess and balance those very interests that
3 we, as a City, had to balance, using our best judgment
4 on how we kept people safe and supported legitimate
5 First Amendment protests.

6 **Q. So you were aware of the approaches that the**
7 **Department of Transportation was taking with regard to**
8 **CHOP as it was happening in June of 2020; is that right?**

9 A. So from -- and again, from -- from -- are you
10 talking from June 8th forward?

11 **Q. Yeah. When I talk about CHOP, I -- this is the**
12 **definition I was trying to set earlier.**

13 A. Okay.

14 **Q. I'm talking about June 8th --**

15 A. I just want to make sure because --

16 **Q. -- the evening of June 8th to July 1st, the**
17 **morning of July 1st.**

18 A. All right. Because there were issues, as you
19 know, with the -- the barriers and Seattle Department of
20 Transportation having to do that work before that, so I
21 just didn't want to conflate those things.

22 You know, from the -- the morning of the 8th,
23 obviously there was an attempt by the Seattle Department
24 of Transportation at different times to get in, to take
25 out barriers that had been there for various reasons,

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1 and then to reconfigure so that we could have better and
2 more safe access to the area.

3 That was an evolving kind of dynamic situation
4 itself that -- that on a daily basis, but I think
5 everyone's goal from the beginning was to reduce the
6 number of barriers, to reduce the profile of the area
7 where people were in the protests, and to provide access
8 to that area for businesses, for residents, for first
9 responders and the like.

10 So it was a -- you know, each day I think they
11 had to adjust what they were doing, and it had to be
12 informed by what the ground truth was at the time in
13 that area.

14 **Q. Okay. So you're talking about the changes and**
15 **the changes in approaches and barriers being moved.**
16 **What I'm trying to ask about is what your awareness was**
17 **in real time of that, from June 8th to July 1st, as far**
18 **as what the Department of Transportation was doing in**
19 **that area?**

20 MR. HARRIGAN: Objection. Vague.

21 A. So during that period of time, again, it would
22 vary on every day how much I was in -- I was informed
23 of what they were doing that specific day. But I
24 absolutely understood and knew what the overall goals
25 were, and -- and was -- was aware of at different times

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1 their attempts to adjust some of the ways the roads
2 worked and the barriers.

3 So absolutely I was -- I was aware of that, but
4 depending on which specific day and which specific time,
5 there may be more that I can -- information that I could
6 provide you.

7 BY MR. WEAVER:

8 **Q. Okay. You mentioned earlier that the City had**
9 **to protect the First Amendment rights of the protesters.**
10 **What's your understanding of what the City's duty was to**
11 **protect the First Amendment rights of people in Capitol**
12 **Hill during CHOP?**

13 A. So, you know, you're aware that -- that there
14 is a fundamental First Amendment right to protest. And
15 the -- it's no different than other protests we've had
16 during my four years as mayor that could -- that ranged
17 in size and location, but there is a constitutional
18 right to protest.

19 The City has an obligation to provide and
20 protect. And so that applied in the Capitol Hill area
21 just as it applied in other places in the city before.

22 **Q. What was your understanding of what the City**
23 **had to do to protect that First Amendment right?**

24 MR. HARRIGAN: Objection. Calls for a legal
25 conclusion.

10 (Pages 37 to 40)

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1 A. Yeah, I'm not sure -- I -- I've not -- I'm
2 reading this again for the first time in a long time.
3 If there's -- I have not gone back to compare what I
4 know today with what I knew then with what we knew
5 before.

6 But our purpose at this point, like I said
7 before, is, from the very beginning, when the police
8 department made the decision to temporarily leave the
9 East Precinct, the intention was to return right away.
10 That was not able to happen.

11 And so then, operationally, we had to shift to
12 how do we then have a successful operation that can do
13 that in a time when the protests themselves were against
14 the police, and the police themselves' presence
15 escalated behavior.

16 So we had to de-escalate the situation, balance
17 the public interest of, one, protecting business and
18 residents; two, protecting the First Amendment rights of
19 people; protecting the first responders, and do it all
20 during a global pandemic, at the same time we were
21 balancing all the things that were happening in the
22 city.

23 So this emergency order really was intended to
24 finally be the culmination of all the steps we took that
25 we thought were the best way, exercising our best

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1 judgment on how to get from a very dynamic, sometimes
2 volatile situation, to the point where we could
3 successfully and safely move people from the area.

4 BY MR. WEAVER:

5 **Q. Okay. You indicated in that long answer what**
6 **your -- that your intention from the beginning was to**
7 **return right away.**

8 **So does that mean your intention from the**
9 **beginning was to clear out the streets and get the**
10 **police back in the precinct right away? Is that what I**
11 **understand you -- hear you to say?**

12 A. No, I --

13 MR. HARRIGAN: Objection. Vague.

14 Go ahead.

15 A. And if -- if there's a -- I'm trying to give
16 you the -- I'm finding your answers [sic] broad, so if
17 I'm answering too broad, perhaps we could narrow it.

18 But I think what I said was that, when the
19 police department made the decision to temporarily leave
20 the precinct, their intent was to return immediately,
21 and then that didn't occur.

22 BY MR. WEAVER:

23 **Q. So early -- in one of your earlier answers I**
24 **think indicated that, prior to June 20th, there had been**
25 **planning going on to clear the streets and sidewalks and**

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1 **the park in CHOP; is that correct?**

2 A. There was ongoing planning from the very
3 beginning on how we could operationally do that, that's
4 correct.

5 **Q. Okay. Did you see any plans related to that**
6 **prior to June 20, 2020?**

7 A. So again, the -- there wasn't a written plan.
8 There would be a briefing for, here's where we are and
9 what we think we can do, at least when it came to me.
10 There may be down below.

11 And I know that, as around June 20th, I was to
12 be briefed on what the operational plan was and where we
13 were in the process, and how close we thought we were to
14 doing it.

15 It was really reliant upon -- to do this
16 successfully, we always needed the Seattle Police
17 Department, and there were a number of factors that
18 Chief Best and her operational team, her command staff
19 had to weigh to make a determination on what they
20 thought they could successfully do that.

21 And so from the beginning, that planning was
22 going on. And in and around, I think, June 20th, I was
23 supposed to be briefed on where we were on that.

24 **Q. Had you been briefed before June 20th on what**
25 **the plans were to clear out the area?**

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1 A. So the -- on an ongoing basis, I was briefed on
2 where we were and kind of where we were on getting to
3 the point where the -- the police department primarily
4 thought it could be successful in having a plan that
5 would have a safe operation, move people out safely, not
6 escalate things, not lead to more events, keep the first
7 responders safe.

8 And so that was an ongoing discussion, and
9 again, kind of where we were operationally on the
10 ability to do that, I think I was to be briefed on or
11 around June 20th.

12 **Q. Again, do you know whether you had been briefed**
13 **before June 20th on any of those things?**

14 A. Again, it's on -- on an ongoing basis, I would
15 be briefed on where we were and what the status was in
16 and around the Capitol Hill area, as well as other parts
17 of the city.

18 But obviously there was focus on the Capitol
19 Hill area by multiple departments: Seattle Department
20 of Transportation, Public Utilities, the Seattle Police
21 Department, the fire department.

22 And they were working together, and they of
23 course would brief me and inform me. And I had, you
24 know, a number of conversations with Chief Best and some
25 with -- with Chief Scoggins about those, but those --

15 (Pages 57 to 60)

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1 that was an ongoing process in order to get from where
2 we were in a very dynamic situation to the point where
3 we actually could be successful in doing what we did on
4 July 1st.

5 **Q. So when you say you were briefed on where we**
6 **were, are you talking about the situation on the ground,**
7 **or are you talking about plans to clear the area out?**

8 A. Those are the same thing. You couldn't clear
9 the area without addressing what was happening on the
10 ground. And I think it was pretty clear that in
11 weighing all of these public interests, that, you know,
12 Chief Best would be the best person to tell you this,
13 but it was their assessment at the time that it would
14 not be successful for an operation to occur that Seattle
15 Police Department would be the front line for, because
16 every time Seattle police would respond in and around
17 that area, it could escalate because these were protests
18 against police action.

19 And so we were using all of the other actions
20 that the City departments were doing to de-escalate the
21 situation, to try to get it calmed down, and then to
22 reduce the profile of it enough that we actually could
23 have a successful operation to be led by the Seattle
24 Police Department.

25 The department -- the operation itself was very

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1 complex and required, you know, I think, hundreds of
2 officers who had to be specifically trained on the new
3 orders that Judge Jones gave. They had to do it over
4 time. They then had to work with the other City
5 departments to determine who would go in where, and what
6 they would do.

7 And so that kind of operation doesn't happen
8 overnight, and it has to have on the ground the
9 circumstances that can allow them to be successful.

10 **Q. At any time prior to June 20, 2020, do you**
11 **recall demanding to see from anybody, any department,**
12 **any executive, a plan to clear out the CHOP?**

13 A. So on a -- again, and I -- and maybe I'm not
14 being clear on this. From the very first, from June 8th
15 on, the discussions were centered upon, how do we do the
16 things that I just talked about, balance those public
17 interests, but de-escalate the area enough, reduce it in
18 profile so that we could have a successful operation
19 that the police would have to participate in and lead.

20 And that, over time, required other departments
21 to take the lead: Seattle Department of Transportation,
22 Seattle Public Utilities, the Parks Department, and the
23 like.

24 And so there was an ongoing discussion of that.
25 And so yes, on a regular basis, you're asking me, like,

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1 okay, guys, where are we? When can we get this done?
2 We would have those conversations. But truly it
3 required the Seattle Police Department to be at a place
4 where they felt that they could have that operation
5 successfully, given what was really happening on the
6 ground.

7 And that meant de-escalating it, getting it,
8 you know, in a more -- smaller profile, and having a
9 place where then Seattle police had sufficient
10 resources, sufficient training, and sufficient numbers
11 that they thought they would go in and also train with
12 Seattle Department of Transportation and others who had
13 to bring in vehicles and -- and moving equipment and
14 dozens of Parks employees.

15 All of this was really an extraordinarily
16 complicated operation, and it took time for them to plan
17 it, but there was no time that either Chief Best or
18 myself wasn't thinking about, how do we make sure and
19 how do we return that area safely to the people and
20 residents of Capitol Hill.

21 **Q. Prior to June 20th, did you ask for a written**
22 **plan from any department on how to clear out the CHOP?**

23 A. It would not have been a normal thing for me to
24 get a written plan. We would have a -- ongoing
25 discussions and briefings. You would have the

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1 departments working together, and there's probably
2 writings that describe -- and emails back and forth
3 maybe that describe who's doing what when. But it's --
4 it's not like they would deliver me a, here's our plan
5 on what we're going to do.

6 So that -- that would not be how we would
7 normally do things, and it isn't what happened here.
8 You know, at the end of the day, this could only occur
9 when the Seattle Police Department felt they could do it
10 safely, and that required us, as a City, to take a
11 number of steps to get to that place.

12 (Exhibit No. 2 marked.)

13 BY MR. WEAVER:

14 **Q. Okay. I've dropped another exhibit into the**
15 **chat, which we've marked as Exhibit 2.**

16 **Go ahead and take a minute, see if you're**
17 **familiar with it.**

18 A. I am. And this is -- this -- again, this
19 confirms what I was saying before. Oh, sorry. I'll
20 wait for the questions.

21 **Q. Okay. So this is an email that you wrote on**
22 **the morning of June 20, 2020; is that right?**

23 A. That's correct.

24 **Q. Okay. And you sent it to Chief Scoggins and**
25 **Chief Best; is that right?**

16 (Pages 61 to 64)

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1 A. And there were other people copied on that as
2 well.

3 Q. You copied a couple of deputy mayors as well;
4 right?

5 A. That's correct.

6 Q. Okay. And I guess the third paragraph, the --
7 "What happened this a.m.," if you could go down to that
8 paragraph. And what I want to ask you -- I'll have some
9 other questions about this, but at this point you wrote,
10 "Your teams also need to develop true operational
11 plans."

12 What operational plans were you referring to in
13 this email on June 20th?

14 A. Yeah. Great question. So there is two things
15 addressed. If you look at the first sentence, it talks
16 about, you know, how difficult and challenging this was
17 for the two chiefs and their departments.

18 But then it says, "I know we're setting up a
19 call later this a.m. to be briefed on options with
20 operational plans for SFD and SPD and other City
21 departments have been developing for Capitol Hill and
22 normalizing the area so residents and business can
23 reclaim the community."

24 So that's what I was talking about before, that
25 underway already was the planning to how we could safely

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1 respond, the young man had been taken to Harborview
2 Hospital.

3 Q. So you're saying the true operational plans
4 that you were looking for was -- was not an operational
5 plan to clear out, but the -- you were looking for a
6 true operational plan to respond better to incidents in
7 the area?

8 A. Yeah, and there's -- I use the words
9 "operational plan" twice. So it's in the top of it, and
10 that's referring to the plans they were going to brief
11 me on, to clear the area and normalize it and return it
12 for the full enjoyment and use of the residents. So
13 that planning had been going on.

14 The other place that I use operational plan is,
15 I thought they had a plan to respond together, and
16 that's what that operational plan is. My first
17 indications, and the reason that part of the email was
18 sent is because my first information that I got was,
19 there was not a plan for fire and police to respond
20 together.

21 That information was not -- turned out not to
22 be completely accurate, and that there was a plan, as I
23 got more information during the day, that they were able
24 to respond, but by the time they responded, the
25 individual who had been shot had been taken to

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1 move people out of the CHOP, and that required us, as a
2 City, to work with multiple departments. And I was
3 going to be briefed on where they were on that. They
4 had been working on them obviously for a significant
5 period of time in order to brief me.

6 The second part of it was dealing with the fact
7 that that morning there -- there had been -- the very
8 early morning hours, there had been a young man who was
9 shot in the Capitol Hill area, and that the first
10 information that I got on that was -- seemed to indicate
11 that there was not the joint planning to respond to that
12 by the Seattle Police Department, Seattle Fire
13 Department.

14 And that's what the other sentence is referring
15 to, you know, is, we -- it says, we discussed at the
16 outset, you know, and we told the public, there can't be
17 any area where we didn't respond, and that's what that
18 is addressing, is that the early information I got, and
19 there was an email earlier that preceded this from now
20 Chief Diaz, that my first indications were that there
21 had not been planning together between Seattle Fire
22 Department, Seattle Police Department in the response.

23 That information was incomplete, and it turned
24 out that they did have a plan to work together and
25 actually were able to respond, but by the time they did

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1 Harborview.

2 Q. What's your understanding of how long it took
3 the police department and the fire department to respond
4 to that shooting that we're talking about?

5 A. I don't have the time frame for that. I have
6 the -- I now understand, based on information I got that
7 day, as to kind of what the sequence of events were, but
8 the -- they -- the fire department did respond. The
9 police did respond.

10 Because of the factors we talked about before,
11 in order for police to safely enter the scene, they
12 would have to have a certain number. Fire department
13 will not respond to areas where there's any kind of
14 public safety factor.

15 That's normal protocol throughout the City for
16 all four years I've been mayor. They will wait for
17 police. And by the time the police were able to do that
18 and they were able to enter, the young man had already
19 been taken to Harborview Hospital.

20 Q. So to go back to the earlier question, so what
21 operational plans had you seen from any department --
22 the police department, the fire department, any other
23 City department -- prior to June 20th on how to clear
24 out the area?

25 A. So I think that email shows that I was supposed

17 (Pages 65 to 68)

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1 could go in and serve the people who were experiencing
2 homelessness, get them services and out of the park, and
3 again reducing that profile, the number of people who
4 were there.

5 **Q. Do you know whether there was a renewed effort**
6 **in Cal Anderson to get people moved out who were in the**
7 **park during CHOP, prior to June 23, 2020?**

8 A. I don't know prior to June 23rd. I know, prior
9 to July 1st, we had a renewed effort on all fronts to
10 get people to leave the park. So with regards to
11 homelessness, you know, we did do a concerted effort,
12 working with our service providers, to have outreach
13 workers go in there, to have places where they could go
14 to, and so there was an effort.

15 I couldn't tell you exactly what day it
16 started, but we -- it was part of our push to try to get
17 the fewest people in the park as possible and try to --
18 to really use all of the tools the City had to reach the
19 people who were there.

20 So people experiencing homelessness, we had to
21 try to provide them a place to go, which required
22 outreach services and shelter. We tried to get credible
23 messengers in there to talk to other people, to get them
24 to go.

25 You know, we were using every tool we had -- we

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1 have it more contained.

2 **Q. Okay. I will get to that later, but in terms**
3 **of shrinking the number of people in the park, do you**
4 **know whether there were any renewed efforts to get**
5 **people to move out of the park prior to June 22, 2020?**

6 A. Again, I'd have to look at the exact dates, but
7 we throughout the -- our -- we were doing all we could
8 to de-escalate, to weigh those interests I've talked
9 about before, the competing interests, you know,
10 protecting the First Amendment rights, the public safety
11 of the business and residents and people coming to the
12 area, but also to try and find ways to encourage people
13 to leave.

14 And then shortly before the operation, you
15 know, once we had kind of the contours of what it would
16 take and what the Seattle Police Department believed it
17 needed to be to be successful, then we were able to push
18 even more on that and use further tools, as I mentioned
19 before, like the Black clergy and getting homeless out
20 of the park.

21 You know, me, I think, said at one press
22 conference, "Time for everybody to go home." All that
23 really was to try to reduce the numbers there because,
24 if we didn't have a low enough number of people, the
25 police could not have been successful.

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1 worked with, you know, the Black clergy who went in
2 there to talk and meet with people to urge them to
3 leave.

4 So we were using, you know, a range of tools
5 over a period of time to really try to do what I said
6 before, which really was first de-escalate, then kind
7 of, you know, shrink it as we could profile-wise, and
8 then use all of our tools to lessen the number of people
9 who were there. Because until we did that, there was no
10 way the Seattle Police Department could have led the
11 operation that they did on July 1st.

12 **Q. Do you know of any attempts that were made to**
13 **shrink the area, as you described it, prior to June 22,**
14 **2020?**

15 A. Yes. The -- you know, almost immediately after
16 the -- when the area was set up, the Seattle Department
17 of Transportation, Seattle Fire Department, and others
18 did just that, where they removed a number of barriers,
19 to allow, for example, traffic to flow on 12th, for
20 traffic to be able to flow, have ingress and egress on
21 Pine or Pike.

22 And so there was, from the -- from June 8th,
23 9th, on, there was a number of times when the Seattle
24 Department of Transportation was, you know, basically
25 reducing the footprint, if you will, so that we could

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1 And the July 1st operation, as I said, was
2 incredibly complex, incredibly difficult to plan, and
3 was only going to be successful if we were able to do
4 those previous steps.

5 **Q. Do you recall that you -- the press conference**
6 **in which you said it was time for everyone to go home**
7 **was on June 22, 2020?**

8 A. I don't remember the date, but if you showed me
9 the transcript, it would be right around that time frame
10 because, again, we now knew kind of what the contours of
11 what we -- we thought we could move towards.

12 And really, the linchpin was, you know, Seattle
13 Police Department feeling that it could do it safely,
14 you know, in an atmosphere of a protest that was not
15 just a protest as we've had in Seattle before on, you
16 know, climate change or immigration, but a protest
17 against the very police, which made it even more
18 challenging and difficult for them to do their job.

19 **Q. You had given a number of press conferences and**
20 **interviews and that sort of thing during CHOP; is that**
21 **accurate?**

22 A. I did. I thought it was very important for us
23 to be communicating as frequently as we could with the
24 public, and for the press to be able to answer
25 questions.

19 (Pages 73 to 76)

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1 Regularly that would include Chief Best and
2 Chief Scoggins, but really, really important we thought
3 that there would be this information going to the public
4 on where we were, what we were doing, and why we were
5 doing it.

6 **Q. Why didn't you say, in any of those previous**
7 **press events, that it was time for people to go home?**

8 A. I'd have to look at all the previous ones. I
9 may have said things like that, or what our expectations
10 were. But again, it was an evolutionary process. You
11 know, you had thousands of people protesting for Black
12 lives against the police.

13 And it wasn't just here in Seattle. It was in
14 every major city in America. And we saw in other cities
15 those protests devolve into nightly violence and
16 conflict, you know, whether it was Portland. They had
17 shootings in Louisville.

18 I was talking to mayors in Atlanta, Louisville,
19 Los Angeles, to compare notes on what were people doing
20 and how do we address this. And for us in Seattle, what
21 we really wanted to do, again, was balance those
22 competing interests.

23 It was important that people protest the -- the
24 killing of George Floyd. That was part of our national
25 dialogue. But at the same time, in -- in ensuring that

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1 can recall. One was shortly after the -- the area was
2 established, I went and met with protesters and to see
3 what was happening. I think that was maybe the 8th or
4 9th.

5 I had a subsequent meeting, and actually there
6 may have been an additional because I was up there at
7 least twice, meeting with businesses and residents, and
8 walking and talking to businesses and residents about
9 what their concerns were and what the City could do to
10 address them.

11 And then I had another meeting where I was
12 twice in one day at the First AME Church there, which
13 the first meeting was with a number of Black clergy
14 to -- to get their assistance and help and hear their
15 views on how we could move forward as a City on a range
16 of issues, but including what was happening right on
17 their doorstep.

18 And then later that day, with some of those
19 Black ministers, met with some of the people who
20 identified themselves as -- as protest leaders, to see
21 if we could get them to get people to go home. And so
22 those were the official meetings.

23 And then I went unofficially a couple times. I
24 just rode my bike up there, and -- and looked around.

25 **Q. On the -- on the unofficial visits where you**

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1 right to protest, we also had to be realistic about how
2 do we make sure that we can provide for the public
3 safety of those protesters, for the businesses and
4 residents, and for all the other residents of Seattle or
5 other places that may come there.

6 At the same time, we're -- we're, you know,
7 looking out for the whole city in the middle of a global
8 pandemic. And so at every step of the way, we were
9 trying to adjust what we're saying, and I was trying to
10 address in my press statements where -- where we were at
11 that moment in time.

12 Once we got to the point that the Seattle
13 Police Department thought they knew what they needed to
14 be successful, that meant we needed to have fewer
15 people. So we made a concerted effort to try to reduce
16 the profile and the number of people in and around
17 Capitol Hill so we could be successful.

18 **Q. How many times did you personally visit CHOP?**

19 A. If -- between June 8th and July 1st, I think I
20 was there maybe four or -- I think four times. It might
21 have been five.

22 **Q. How many of those were what I'll call official**
23 **visits, and how many of those were visits that you made**
24 **in a disguise?**

25 A. I made, I think, three official visits that I

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1 **rode your bike up there, do you recall when those visits**
2 **were made?**

3 A. I don't recall the exact dates of them, but
4 they obviously were made in that time frame.

5 **Q. What did you do on those unofficial visits?**

6 A. I just rode my bike up and then walked around
7 the area to see what was happening. You know, when I --
8 when I come in an official capacity, it -- it, one,
9 people respond differently, and -- because you're the
10 mayor.

11 It also requires that I have security with me,
12 which are police officers, which can be a complicating
13 factor, particularly during these events. And so when I
14 went by myself, I was able to, you know, not have that,
15 and just see for myself what was happening.

16 **Q. So what time of day did you go on your**
17 **unofficial visits?**

18 A. I think it was late afternoon, early evening.

19 **Q. And what did you see while you were there?**

20 A. I saw -- you know, that's a broad question. I
21 rode my bike around all of the parts, went in and out of
22 Cal Anderson, went in a couple of businesses, and -- and
23 so I saw a lot of things.

24 **Q. How many tents did you see in Cal Anderson Park**
25 **on any of your visits?**

20 (Pages 77 to 80)

Hunters Capital, LLC v. City of Seattle

Mayor Jenny A. Durkan

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1 A. Yes. There -- there was -- members of my staff
2 were up and around that area, I think, frequently.

3 **Q. Okay. So what members of your staff were**
4 **there, that you know of?**

5 A. I think it varies, depending on the day, but
6 during that period of time, I know that Deputy Mayor
7 Sixkiller was there, my chief of staff Stephanie Formas,
8 Deputy Mayor Ranganathan. Those are the ones in the
9 mayor's office.

10 I also had business outreach people during that
11 period of time that changed a little bit, but it was a
12 woman by the name of Sabrina who was reaching out
13 regularly to businesses, and I think visiting them.

14 I think we also had people from Department of
15 Neighborhoods go at occasional times. But those are the
16 people that I recall from my office being in the area
17 and Capitol Hill during that period of time.

18 **Q. Did you receive reports back from those people**
19 **about what they were observing during their time at**
20 **CHOP?**

21 A. Yeah, I'm not sure I'd call them reports.
22 There wasn't anything written or formal. But it would
23 be, you know, feedback. As you know, we were -- I was
24 getting updates, and it would kind of give me an update
25 on where we were, what the issues were, and so I would

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1 get those kinds of reports back.

2 **Q. Was that roughly on a daily basis that you'd**
3 **hear from somebody about what -- where you were and what**
4 **was going on up in CHOP?**

5 A. You know, I don't know -- I wouldn't say if it
6 was on a daily basis, and sometimes it could probably --
7 people would tell me what was going on more than once in
8 a day.

9 I think it really depended not just on what was
10 going on in Capitol Hill, but what was happening in
11 other parts of the city that was taking my attention.
12 It was -- during that period of time, there was a lot
13 going on.

14 And so obviously we devoted the resources.
15 That's why members of my staff were reaching out
16 directly and helping there, but there were other things
17 that I was required to do, everything from, you know,
18 pandemic planning to some of the activities that we were
19 afraid that the president was going to do. So it was a
20 really busy time.

21 **Q. Did you ever feel like you had a lack of**
22 **information or that you wanted more information than you**
23 **were getting about what was happening on the ground in**
24 **CHOP?**

25 A. I don't think that I had a lack of information.

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1 I think, you know, the one reason I rode my bike up
2 there is, I always like to see things myself.

3 **Q. So we talked a little bit about the**
4 **pre-June 8th protests. What was your understanding of**
5 **what those protests were about primarily?**

6 A. So the -- the primary focus of those protests,
7 you know, was obviously in -- came out of the murder of
8 George Floyd. And you saw those protests not just here
9 in the city of Seattle, but -- and not just nationally,
10 but globally.

11 And the -- really, the center of it, I think,
12 was, is that it was a -- in support of Black lives and
13 how we could change our society's, you know, longtime
14 established practices that really had excluded
15 African-Americans from so much of the opportunity in our
16 country. And that, while it was focused on policing,
17 the topics were so much broader than that.

18 And the meetings I was having with community
19 was really generational disinvestment and lack of
20 opportunity, everything from access to healthcare, to
21 housing, to educational justice, to employment.

22 And so the protests were, you know, Black Lives
23 Matter. It started because of police conduct, but it
24 really went to where we were as a society about all the
25 systemic racial inequity barriers that had existed for

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1 generations and denied people opportunity.

2 **Q. And was it your understanding or perception**
3 **that that theme of the protests continued as well into**
4 **the -- into CHOP and what the main message was that**
5 **people were trying to get through with CHOP?**

6 A. I think you'd have to -- you know, which
7 people? There is -- there is no time through 2020 or
8 even today that that message of a fight for Black lives
9 and equal opportunity doesn't continue to resonate and
10 doesn't continue to be raised.

11 And so I think that absolutely throughout June,
12 and throughout the summer, that that was something that
13 I was very focused on as mayor, is to how we could -- at
14 the same time, you know, I was a person who believed we
15 could not de-fund our police by 50 percent, but also
16 believed we have to make generational investments into
17 our communities of color, particularly our Black
18 community. And so that message continues to this day,
19 and that policy and that important goal of our society
20 never stopped.

21 **Q. Okay. Is it safe to say that you were**
22 **concerned that there had been a significant number of**
23 **clashes between protesters and police near the East**
24 **Precinct in the days leading up to June 8, 2020?**

25 A. Yes.

24 (Pages 93 to 96)

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1 Q. What was your understanding of what was going
2 on in that area with regard to those sorts of clashes?

3 A. So I think it evolved over time, and again, I
4 think it began sooner than when the protests kind of
5 started to focus in and around Capitol Hill. You know,
6 we saw on the evening of -- I think it was the 30th -- I
7 mix those days up, the 30 and 31st, but the Friday when
8 you had the first kind of protest activity in and around
9 Chinatown International District, that was -- in many
10 ways it was actually, I think, what they call direct
11 action, work by more of the anarchist Black Bloc organization
12 that was very destructive around Chinatown International
13 District.

14 And then the day of May 30th, we had a protest,
15 a peaceful protest, of thousands of people that started
16 in Westlake Park and then moved to the federal
17 courthouse.

18 But in and around those events, we had numerous
19 events. The timeline from that day is in many ways
20 incredibly reflective of how dynamic the situation was,
21 where there were parts where there was a number --
22 hundreds, if not thousands of peaceful protesters.

23 At the same time, just blocks away, we had
24 incredibly destructive anti-government actions
25 happening. You know, we had peaceful protesters at the

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1 same time we had looting.

2 And so you took all of those dynamics, and it's
3 not like they disappear because people move to Capitol
4 Hill. The police had to be planning for those same
5 dynamics every night.

6 And so during the day and during the evenings,
7 you would have thousands of people who were there
8 peacefully protesting, and at the same time, in and
9 around those crowds, you would have people who were
10 there solely to have either destruction or a fight with
11 the police, and so having to navigate those things at
12 the same time, you know, you're balancing those
13 interests we were talking about before.

14 When you have thousands of people who converge
15 in an area to protest police behavior, or antipolice,
16 around a police station, it creates an incredibly
17 different dynamic than our police department has ever
18 had to deal with before.

19 Because even around the WTO protests, those
20 weren't protests against the Seattle Police Department
21 or policing. They were protests against a world
22 organization.

23 And so this was a new dynamic for the Seattle
24 Police Department and the City to have to determine, how
25 do we both keep the precinct safe, keep the businesses

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1 and residents safe, know that you have these thousands
2 of protesters, and try to keep them safe, when you have
3 at the same time people who are embedded in the crowd
4 who are there solely for destructive purposes and to
5 basically start a confrontation with the police.

6 Q. So at some point you made a decision that the
7 barriers that had been put up around the East Precinct
8 should be moved to allow protests to walk by on
9 June 8th; is that correct.

10 A. Yeah. That -- that was a decision that we made
11 in discussion and collaboration, but it really was the
12 culmination of -- you know, we saw evolving
13 circumstances on Capitol Hill from about the 31st until
14 the 7th that became increasingly volatile and -- and
15 difficult, not just for the police to manage, but
16 actually quite dangerous.

17 It was, you know, the 7th, when the person
18 drove into the crowd and an individual was shot. But
19 you had -- at the same time, you know, we had this
20 ever-evolving situation.

21 And against that backdrop, you know, all of
22 this was happening at the same time that the president
23 of the United States was saying that, if we couldn't
24 control our streets in Seattle or we didn't take
25 different steps, he was going to send in federal troops

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1 or federal agents, depending at which period of time we
2 were, which we took very seriously because we saw that
3 happen in other cities and how much that could escalate
4 events.

5 And so we saw a period of time where there --
6 we had very good intelligence on why we thought the East
7 Precinct had been targeted, and the chief of police made
8 the decision that she needed to protect that precinct by
9 having the police line. But we also saw that police
10 line night after night after night became a point of
11 conflict.

12 On June the 1st, for example, we had on the
13 national scene the president state that he was going to
14 send, you know, troops and agents into cities like
15 Seattle. He had tear gas issued in Lafayette Square so
16 he could have a public walk to a church across the
17 block, which ignited protesters across the country who
18 were, you know, very activated by this act.

19 And yet that same night, we ended up having a
20 conflict between the Seattle Police Department and
21 people at those barriers, where the Seattle Police
22 Department had to use tear gas.

23 All of this started to have an effect where it
24 was incredibly, incredibly wearing on those officers who
25 were on the line every night, and it was devolving into

25 (Pages 97 to 100)

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1 this ever-increasing conflict between police and
2 protesters. And at the same time, the Seattle Police
3 Department is under a consent decree, and we know the
4 federal judge has questions about it because the monitor
5 is asking us questions about it. And so we had to be
6 thinking about what can we do to change those tactics.

7 And so Chief Best and I, on a regular basis --
8 she was looking at operationally how does she accomplish
9 what she needs to do, at the same time kind of
10 de-escalate things.

11 And so they would change how many people they
12 had at the line, how far away from the protesters, what
13 kind of barriers they were using. None of those things
14 were successful. And by the 7th, by the time it came
15 again, that was probably one of the highest levels of
16 escalation.

17 And again, tear gas had to be deployed, but the
18 decision was made is, we've got to try something new
19 because we are now getting to the point where, you know,
20 it is -- it is degrading the relationship between -- the
21 public trust between the police and not just protesters,
22 but citywide. It's depleting the officers themselves.
23 And we had to try a different approach.

24 **Q. Among the things that were decided on as a new**
25 **approach, did that include the mayor's office directing**

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1 **the removal of ammunition and evidence from the East**
2 **Precinct on June 8th?**

3 A. No, not at all. In fact, once the decision --
4 once we had the discussion -- and in the discussions
5 that people had, we had previous to then was that, if
6 there was -- if the decision was made by the department
7 that they would leave the precinct at all, or were
8 forced to leave the precinct because it became overrun,
9 what would be the most safe course?

10 And obviously you would have to remove a range
11 of things: guns, ammunition, confidential information,
12 information related to sources and informants, personal
13 property, computers, and the like.

14 And so there was, you know, the -- again, it's
15 kind of like -- not to the same extent because clearing
16 the CHOP was much, much more complicated and required,
17 you know, hundreds of officers to be trained, and City
18 workers.

19 But the decision on -- when the police
20 department made the decision that they would temporarily
21 leave the precinct, it required them to take other
22 actions, including the removal of sensitive information
23 and things like guns and ammunition.

24 (Exhibit No. 3 marked.)

25 ////

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1 BY MR. WEAVER:

2 **Q. Okay. I'd like you to look at Exhibit 3, which**
3 **I just dropped into the chat. This is an email. I know**
4 **you're not copied on it, but it's dated June 8, 2020, at**
5 **10:23 in the morning, from Casey Sixkiller, saying, "I**
6 **want to see a plan to remove firearms, ammunition and**
7 **all evidence from the East Precinct today. That plan**
8 **should be capable of being fully executed by 5:00 p.m.**
9 **today."**

10 **Do you see that?**

11 A. I do see that.

12 **Q. Were you involved in -- did you discuss with**
13 **Mr. Sixkiller getting a plan from the SPD to remove**
14 **firearm, ammunitions, and evidence from the East**
15 **Precinct on June 8, 2020?**

16 A. No, I don't recall talking to Mr. Sixkiller
17 about that. And I -- this is the first I'm seeing this.
18 And I don't know -- you'd have to ask him kind of what
19 led to this.

20 But again, I think it's important to note that
21 the day before, on the 7th, we had a discussion with
22 Chief Best and with others on kind of what the -- what
23 the options were with regards to changing the dynamic,
24 including the option of either removing the barriers or
25 the like.

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1 One of the -- in that discussion, my
2 recollection is, is that someone in the command staff
3 with the chief said, you know, if we do that, then we
4 have to make sure that these other things happen. And
5 that would include removing all those things we talked
6 about before.

7 Obviously, if you're going to -- if you think
8 either the precinct could burn or you think the
9 protesters might overrun it, you can't have it have
10 guns, ammunition, confidential information, and the
11 like.

12 And remember, you know, place yourself in time.
13 It's hard to do. But we saw a police precinct burn in
14 Minneapolis. We saw other police precincts, you know,
15 be overrun or challenged.

16 And so that was something we actually had to
17 plan for. And my recollection is, is that the police
18 had raised this as something that they would have to do
19 in order to make sure that the precinct was secure.

20 And so I don't know if this is what
21 Mr. Sixkiller was doing, but it would have been my
22 expectation that in sharing their full plan with him or
23 our office, that they would have included that in their
24 planning.

25 **Q. Do you recall in those discussions, either on**

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1 June 7th or June 8th, discussions about whether the
2 police should evacuate, either partially or entirely
3 personnel from the East Precinct?

4 A. So on the 7th, we had a discussion related to
5 the precinct in my office with Chief Best and command
6 staff, where we were looking at what certain options
7 might be, but it was also for us to be briefed by the
8 FBI on what the threat to the East Precinct was or could
9 be.

10 And in that discussion, there was, you know --
11 there was discussions about if -- again, if the police
12 had to leave the precinct, as they did in some other
13 cities, or if the precinct, you know, was targeted with
14 fire or other things, what would have to happen.

15 And one of the things that was mentioned in
16 that is obviously, if you've got a police station that
17 has, you know, guns and ammunition and confidential
18 information and the like, you have to have a plan to
19 remove that, if you think that -- that any of those
20 incidents could occur and the police have to be out of
21 the precinct.

22 Q. Okay. Were there discussions on June 7th or
23 June 8th that you were involved in about whether to --
24 the police should evacuate personnel, either entirely or
25 in part from the East Precinct, in addition to other --

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1 in addition to materials?

2 A. Yeah, I think if you're talking about when the
3 actual decisions were made and June 8th to -- to
4 temporarily leave the precinct, I was not involved in
5 the discussions that occurred that day.

6 I got periodic reports on where we were, but it
7 was my understanding that there was -- that the plan
8 evolved over time, and that the original plan was
9 actually to keep personnel in place and take some other
10 steps to protect the personnel.

11 But when that wasn't -- when the police
12 commanders who were there made the decision that they
13 couldn't do that and adequately protect the officers,
14 they made the decision that they would temporarily
15 leave, stage nearby so they could respond, with the
16 intent of returning, you know, after the protests had
17 dissipated, which was usually about, you know, 2:00,
18 3:00 in the morning most of the evenings.

19 Q. So were you -- were you involved in any
20 discussions about whether to evacuate personnel from the
21 East Precinct on June 8th?

22 A. No, I was not. I -- I -- I got periodic
23 reports, but there was a meeting that was had between
24 Chief Best and the command staff and some people in my
25 staff and other departments at the Emergency Operations

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1 Center.

2 Q. When did you first learn that the Seattle
3 Police Department had, in fact, evacuated personnel from
4 the East Precinct?

5 A. I did not learn that they had evacuated
6 everyone until later that evening, after it had
7 occurred. There was an interim -- as I understood it,
8 the plan had been that once the -- once the decision --
9 the people -- to remove the barriers, then people wanted
10 to protect against some of those cascading impacts that
11 we just discussed.

12 And so the police department's plan, as I
13 understood it, was to remove the most confidential
14 information, weapons and the like, and -- from the
15 precinct, that they were going to build a fence around
16 the precinct that would be outside the sidewalk area to
17 have a perimeter protection around the precinct, that
18 they were going to foam the building down with fire foam
19 to prevent against the risk of fire, and that they then
20 did outreach also to the adjacent buildings to make sure
21 that they were prepared.

22 It's my understanding -- again, I was not part
23 of the discussions -- that once they went to do that,
24 they determined they could not erect the fence where
25 they intended because of -- I don't know what the issues

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1 were, but they couldn't, and instead had to attach
2 basically the fence directly to the building, which then
3 impacted the ability to get in and out of the building
4 safely.

5 They also determined they couldn't foam the
6 building down because the foam didn't work that day.
7 And as I now understand it, and did not at the time, the
8 police commander made the decision that, if there was a
9 risk to the personnel in the building, and he didn't
10 think that they could assure that they could themselves
11 evacuate safely should something happen, it would be
12 better to move them out of the building temporarily,
13 stage them nearby so they could respond to any police
14 need, and then come back into the building, you know,
15 once the protests dissipated.

16 Q. When you found out on the evening of June 8th
17 the police department had evacuated personnel from the
18 East Precinct, were you concerned about long-term
19 difficulties in getting the police back into the
20 precinct?

21 A. On the 8th, no. And again, it was -- you know,
22 there was a period of time in there that we thought that
23 they had left kind of a skeleton crew. When I learned
24 that they had made the decision to -- to remove everyone
25 there temporarily, what I was also told was, the plan

27 (Pages 105 to 108)

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1 out of that area, out of the Capitol Hill and Cal
2 Anderson area, without the assistance of the police
3 department.

4 In order for the police department to be able
5 to assist in that, a couple different things had to
6 happen. First, the reality was, these protests were
7 against the police, directly against the police, and
8 police presence in that area led to escalation of events
9 and made it more volatile, not less volatile. So we had
10 to reduce the profile as much as we could, and the
11 number of people, until there was a time when Seattle
12 police could lead the event.

13 Second, we need to de-escalate what was
14 happening in there, period, and get some kind of statis
15 involved, and then move people. In a sense maintain,
16 you know, the s-t-a-t-i-s, not u-s.

17 So -- so this reflects our reality of, okay, we
18 can't do this overnight. It is incredibly dynamic and
19 complicated. And even when we got to the point that we
20 did do it, you know, Mr. Weaver, I can't tell you enough
21 how complicated that was to marshal that many police
22 officers without the benefit that we normally would have
23 of mutual aid of other police departments, because other
24 police departments did not want to come assist, having
25 to take those people off -- off their regular rotation

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1 to get them trained on Judge Jones' order and what their
2 plan would be, to have the Seattle Department of
3 Transportation be ready with heavy machinery and
4 employees, and get them scheduled on a shift, to have
5 Parks employees the same, all in the middle of a global
6 pandemic, when our City workers were already stretched
7 really thin.

8 And so this was something that took
9 extraordinary amount of planning and preparation. And
10 leading up to that, before we could even begin that
11 operation, we had to have a place that would be
12 successful for the police to operate.

13 And that meant trying to de-escalate, have as
14 few people there as possible, and show that we, as the
15 City, were listening to the protests so that they
16 wouldn't escalate for other reasons.

17 And again, against the backdrop of -- I was
18 really very fearful, as mayor, that the posture that the
19 president was taking during this period of time, and
20 threatening to send in troops and agents itself was
21 going to escalate the situation.

22 So this -- this took an extraordinary amount of
23 coordination, and I think this document reflects from
24 the earliest days, we were really coordinating across
25 departments to see how we could get through each step.

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1 **Q. Did I not hear you say earlier -- and correct**
2 **me if I'm wrong -- that you were concerned about sending**
3 **the message to people that you were going to clear them**
4 **out, and you wanted to make sure you weren't sending**
5 **that message because you were worried what their**
6 **reaction might be?**

7 A. No, that's -- that's not what I said at all. I
8 said that the -- the reality was -- you asked me about
9 whether the Seattle Department of Transportation was
10 getting pushback from protesters, and the answer to that
11 was yes.

12 And part of that pushback from those actions
13 was them thinking this was the prelude to pushing
14 everyone out, and that might escalate. So we had to be
15 very cautious to make sure that each step we were
16 taking, we were achieving our goals, and at the same
17 time not either escalating it for the people who were
18 there, or, frankly, calling more people to come, which
19 was, you know, the stated purpose of other people who
20 were trying to get more people to the area. We were
21 trying to do the opposite.

22 **Q. Okay. Can you -- can you point -- can you tell**
23 **me, if you recall, any specific statement you made prior**
24 **to June 22, 2020, to the public in any interview,**
25 **anything, where you indicated that you wanted people to**

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1 **move out and that CHOP needed to have a definite ending?**

2 MR. HARRIGAN: Objection. Multiple and
3 vague.

4 A. I don't think it's really possible for me to go
5 through every single statement, but I will tell you, I
6 think that my statements were actually very consistent,
7 and the actions of the City were very consistent, if you
8 look.

9 I had a number of community meetings with
10 community-based organizations, including like the Black
11 clergy and others, to see if they could help us
12 intercede to get people to leave. That was over the
13 whole duration. We were trying to find different
14 approaches throughout.

15 So I -- you know, I -- I do believe that we
16 were very consistent in both what I was saying and also
17 what the City was doing to really do what I said, which
18 is, look, we've talked about how challenging that
19 operation was to plan. It was very successful, and I
20 think it is proof that the work we did before that
21 actually gave us the ability to do what was needed to be
22 done.

(Exhibit Nos. 10-11 marked.)

23 BY MR. WEAVER:

24 **Q. Okay. Could you look at Exhibit 9? It's**
25

41 (Pages 161 to 164)

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1 lived out of the state, but I grew up in the area and
2 then returned.

3 **Q. I mean, are you aware of any other time that a**
4 **portion of Capitol Hill was declared an autonomous zone**
5 **by a group of protesters?**

6 A. No. But there's been extended periods of time
7 where Capitol Hill was the subject of long-term protest
8 activity and marches. And as I said, other areas of the
9 city -- we had two areas of the city occupied for a very
10 long period of time, Beacon Hill School, and -- which is
11 now Daybreak Star, which was then Fort Lawton. And so
12 it is not out of the experience of our city to have
13 those protests over a period of time.

14 You know, we had the Occupy protests in the --
15 it was when I was U.S. attorney, because they occupied
16 the street behind my office for many, many, many, many
17 days.

18 And so there's been various times in our city
19 and other cities where there are protests that become
20 long-term protests. At the beginning of this, you know,
21 we did not kind of know what the future would be because
22 we had to be in a position, again, to be where before we
23 could deal with these protesters safely and balancing
24 the interest, respecting the absolute right, First
25 Amendment right, to protest against the public safety

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1 come dominate the streets. And so that had a
2 significant chance of escalating things in our city and
3 in and around Capitol Hill.

4 So the first part of the interview was, look,
5 we know that this is wrong. We know we have to
6 de-escalate. We believe, as a City, that you can
7 balance the interests that we've talked about here
8 today, that you can have First Amendment protests, and
9 at the same time protect public safety.

10 And I think the answer that you cite, the
11 summer of love, my next sentence says, but, Chris, it's
12 really important. We know we need to protect public
13 safety, or something like that.

14 And so it was my -- it was -- he asked when is
15 it going to happen. I think my response was, I don't
16 know. And then I used the inartful phrase, you know,
17 maybe we'll have a summer of love, but that was
18 trying -- again, it was a really bad and inartful way to
19 try to say the depiction of what's happening isn't
20 accurate, and that we know -- because I think it's the
21 next sentence -- I mean, you've probably read the
22 transcript and have it, but I think I immediately pivot
23 to say, but seriously, Chris, we know that we've got to
24 balance public safety.

25 ////

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1 and public health issues at the time for -- for the
2 protesters, for the residents, for the visitors, for the
3 businesses.

4 So all of those things we knew we were
5 navigating, but at this moment in time, I thought it was
6 important that we not lose sight that what was being
7 depicted nationally just wasn't accurate, nor was this
8 something that was necessarily outside the ken of what
9 we've dealt with as a city before.

10 **Q. Do you recall an interview with Chris Cuomo on**
11 **CNN on June 12, 2020?**

12 A. I do.

13 **Q. Do you recall that he asked you how long CHOP**
14 **would be allowed to persist? He may have said CHAZ at**
15 **that point; I don't remember.**

16 **And your response was, "We could have a summer**
17 **of love"? Do you recall that?**

18 MR. HARRIGAN: Object to the form.

19 A. Yeah, I think -- I think my answer was actually
20 a little different than that, and -- and that's not the
21 complete answer. And again, I think, if you look at
22 that whole interview, most of the interview was about
23 the fact that Donald Trump said he was going to send the
24 military into Seattle, and that we -- if we didn't take
25 care of it, he was going to take care of it and he would

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1 BY MR. WEAVER:

2 **Q. So you do remember referring to the summer of**
3 **love, or the potential for summer of love in Seattle?**

4 A. Again, I think my answer was, it's a little
5 more complete that -- that he asked how long is it going
6 to happen? I said I don't know. I then used the really
7 inartful phrase, "could have a summer of love," to try
8 to depict that it's not going to be what the president
9 has represented it as, is -- is anarchy and fires and
10 the like, but then also immediately said, but we also
11 know we have these duties with regard to public safety
12 that we take very seriously.

13 **Q. So do you believe in the totality of your**
14 **comments during that interview you conveyed to the**
15 **public, that you were going to move protesters out soon?**

16 MR. HARRIGAN: Object to the form.

17 A. I think if you look at -- again, we were not,
18 at that juncture, able to say we could do that because
19 the truth was, we could not do that until the Seattle
20 Police Department could lead an operation. Because we
21 couldn't have an operation that successfully would reach
22 that goal until they could.

23 And again, you know, until this time, as again,
24 it's a phased approach, we knew we had to try to
25 de-escalate and calm things down. We then had to try to

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1 shrink the number of people who were there at the same
2 time that the Seattle Police Department had to come up
3 with a plan that they thought could work, because we
4 knew from experience, watching that when the police
5 entered that area, it could escalate things immediately
6 because they were protests against the police.

7 And we had just finished -- remember, this came
8 about because of a nightly skirmish at that police line
9 between police and protesters. And so we had to be
10 realistic, and I had to really rely on the judgments of
11 Chief Best and her command staff on how and when they
12 could be ready. Because it also involves so many other
13 departments. So no, at that time, I could not say we
14 would move people out quickly because we had to first
15 make sure we could do that.

16 BY MR. WEAVER:

17 **Q. Do you recall giving any indication, in that**
18 **interview or any other interview during that first week,**
19 **week and a half of CHOP, that there would be a deadline**
20 **by which the area would be cleared out?**

21 MR. HARRIGAN: Objection to the form.

22 A. No. Because it -- and I think, as we've said
23 here today, we couldn't set a deadline. I think it's
24 really important that, number one, if you set a deadline
25 and say, everyone out by X date or we're going to push

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1 At the same time the Seattle Police Department
2 has to come up with a plan that will work, and we have
3 to rally all those other departments around it.
4 BY MR. WEAVER:

5 **Q. As of -- when do you understand the Seattle**
6 **Police Department came up with its plan to move people**
7 **out of the area?**

8 A. So the final plan was shortly before July 1. I
9 think one of those other exhibits you showed me, you
10 know, the first briefing they were giving me was right
11 around June 20th, which indicates, you know, they had to
12 be working for days and days before that.

13 And so that -- that was the first -- and it was
14 iterative because we had to both assess not only what
15 the department could do, but it changed. It changed,
16 one, because Judge Jones entered his order on what --
17 what tools and procedures you could use if there were
18 protesters, and so they had to train on what the
19 contours of that order were.

20 You had to take people off their shifts in
21 order to train them, and then they had to then -- when
22 they came up with the actual operational plan, it's my
23 understanding -- I didn't participate in it. You know,
24 they actually go off-site and plan who's the first line?
25 Who's the second line? What do the next ones do?

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1 you out, experience would tell us, you're going to
2 invite more people to come because that is typically
3 what happens. It's what happened in Portland night
4 after night after night during the same period of time.

5 And so what you had to do, we thought, using
6 our best judgment as a City, is to take a phased
7 approach that was based on the reality of the
8 circumstances.

9 So in the beginning, when the protesters stayed
10 in the Capitol Hill area, we first had to make sure that
11 we were protecting the safety of the protesters,
12 balancing the public health interest, also protecting
13 the public safety and benefits for the residents and
14 businesses, while we were thinking, how do we, you know,
15 change the profile?

16 So one of the first things -- one of the other
17 exhibits you showed me, you know, SDOT trying to go in
18 and remove all the barriers we could, the bike racks,
19 the this, the that, so that we could reduce the ability
20 of those to be -- so again, a really phased approach,
21 make sure that we could de-escalate it as much as
22 possible, really be attentive to the public health and
23 safety needs, and then work with as many community-based
24 organizations and City people as we could, to get in
25 there to try to address and get people out of the park.

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1 And then they have to coordinate with the
2 Seattle Department of Transportation to bring in dozens
3 of trucks and employees, the Parks Department, the
4 Seattle Public Utilities Department.

5 You know, it was a monumental undertaking that
6 was -- you know, at various stages, they were planning
7 the various contours of it, and then they had to look at
8 it to say, will this work? Will this not work? How do
9 we address this, how do we address that.

10 **Q. You know, I think you've made clear in more**
11 **than one -- more than one answer that it was**
12 **complicated.**

13 **When do you recall first hearing a plan from**
14 **the Seattle Police Department as to how they were going**
15 **to go ahead and move people out? If you don't remember,**
16 **you can say you don't remember.**

17 A. I don't remember the first day that there was a
18 plan, but from the very beginning, Seattle Police
19 Department was assessing what was happening on the
20 ground and whether they thought it would be safe for
21 them to go into the East Precinct. And that was
22 connected with obviously you can't return to the East
23 Precinct unless you have a plan for the area.

24 And so those -- those discussions literally
25 started on the 8th, you know, not in great detail, but

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1 then, as plans developed, and I think the exhibit you
2 showed me before is, you know, on June 20, they were
3 going to brief me on where they were on that planning.

4 **Q. But I think, when I asked you about that, you**
5 **don't even recall whether there was actually a briefing**
6 **on that day; is that correct?**

7 A. I don't know if it was on that day, but I do
8 know that we had the contours of what we were looking
9 at, and, you know, Chief Best had -- had, you know,
10 appropriately given it to her command staff to
11 operationalize, who were working with other departments.

12 And so I think that they were, themselves,
13 looking at, what do we do and how do we do it. And I --
14 you know, I think that the -- like I said, it's -- it
15 had to be informed by what was happening, you know, in
16 and around the area, and that the -- you know, the
17 police were always evaluating how they could enter that
18 area safely, including what time of day.

19 You know, it's -- you know, we -- the operation
20 was launched in the very early morning hours because
21 that's when Seattle Police Department determined how it
22 would be safer for them to do it. So all of those
23 things were factors they were looking at.

24 (Exhibit No. 13 marked.)

25 ///

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1 of -- having some period of time, you know, Chief
2 Mahaffey was dealing with a lot on his plate. And while
3 I will never minimize what was happening on Capitol
4 Hill, how important it was for us to have a plan, during
5 that period of time, the Seattle Police Department was,
6 you know, working significant hours' overtime in every
7 part of the city because we had so many different types
8 of protests against the police, and their people had
9 been on that line for so long. They were really
10 strapped for just the -- the officers and their service.

11 And so I think that this email was perhaps too
12 terse, with that in mind, but I think it showed my
13 frustration that I really believed that a plan couldn't
14 just be that the tents need to be gone. It had to be,
15 how are we going to get the tents gone.

16 **Q. You were frustrated because that had not**
17 **happened yet; there had not been a discussion of how to**
18 **get the tents gone?**

19 A. No, I think there had been discussions, but it
20 appeared to me, from just what was forwarded, that there
21 had not been the same level of coordination with
22 everybody to do what we ended up doing on July 1st, you
23 know.

24 So I think that the -- again, you know, we've
25 talked very much about what a monumental type of

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1 BY MR. WEAVER:

2 **Q. Okay. I'd like you to look at Exhibit 13, and**
3 **it's been about an hour, but I'm getting close, I think,**
4 **to this section. Go ahead and take a look at that**
5 **email.**

6 This is an email that Carmen Best forwarded to
7 you on June 18th. You responded on June 19th. It's
8 regarding what it would take to get the Seattle Police
9 Department into the East Precinct.

10 You respond that Chief Mahaffey's email looks
11 like a lot of must haves and no-how it's going to get
12 done. Your folks need to have part of their -- an
13 overall operation plan developed at the table with the
14 other departments.

15 **Do you see that?**

16 A. Yep, I do.

17 **Q. Do you think they had an operational plan in**
18 **effect on June 19th?**

19 A. No. I think that this was the contours of kind
20 of they were looking at overall what they would have to
21 accomplish for them to go into the precinct, was --
22 which was separate and apart. And I think that's what
23 my response is.

24 You know, we're going to need an overall plan.
25 And, you know, I would say, you know, now in -- in kind

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1 operation, and how many departments this involves, and a
2 real plan was going to require all those things to be in
3 place, and so what was forwarded to me was, I don't
4 think, the -- an operational plan.

5 **Q. Do you happen to know whether there were**
6 **operational plans that were being drafted, even as of**
7 **the week of June 22nd, that did not involve the police**
8 **being in support -- supporting the removal of people**
9 **from the area and barriers from the area?**

10 MR. HARRIGAN: Object to the form. Lack of
11 foundation.

12 A. Removal of the barriers or removal of the --
13 the people, and just some or all? I'm not sure what
14 your question is. I'm sorry.

15 BY MR. WEAVER:

16 **Q. Are you aware of whether there were operational**
17 **plans that were drafted the week of June 22nd that would**
18 **have other departments going into the area and removing**
19 **barriers or people that would not involve the Seattle**
20 **Police Department?**

21 MR. HARRIGAN: Same objection.

22 A. So I'm -- I'm not sure if I understand your
23 question. Operational plan in terms of the final
24 operation to move everybody out, in my understanding, we
25 always believed was going to require involving Seattle

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1 Police Department. Up to that time, we were trying to
 2 see what things we could do to improve the ability to be
 3 successful; so for example, the removal of barriers, and
 4 making a last effort to see how many barriers we could
 5 get out of there before there was a police operation.
 6 But obviously, you know, I can't tell you the
 7 exact time when they started working on and planning the
 8 operation we had on July 1st, but it -- it happened many
 9 days before that because just the logistics of it
 10 required that. But we also knew, in order for that to
 11 be successful, that we had -- again, had to shrink the
 12 profile as much as we could and have as many people out
 13 of there as we could.
 14 BY MR. WEAVER:
 15 Q. Yeah, so it was complicated. I think we can
 16 have a --
 17 A. But, Mr. Weaver, I really think that's -- I
 18 think that really does a disservice. It was more than
 19 complicated. It was really significant in terms of not
 20 just the organization and the number of people you had
 21 to marshal, but you had to do it in the right timing.
 22 You had to do it and train all these people without
 23 people knowing that you were coming because having that
 24 operation early in the morning was important to the
 25 success.

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1 So I think it's -- it's more than just
 2 complicated. It was -- really required us marshaling
 3 resources from departments, and therefore taking them
 4 away from their other responsibilities in order to be
 5 successful in this. And I think, you know, if you look
 6 at what happened on July 1st, it -- it showed that we
 7 were able to do that successfully.
 8 Q. Would you agree that one of the things that
 9 made it more complicated was that the attempt to clear
 10 out the area occurred three weeks after the barriers
 11 were first repurposed on June 8th?
 12 MR. HARRIGAN: Object to the form.
 13 A. No, I -- I wouldn't agree with that at all.
 14 MR. WEAVER: Okay. I think we can take a
 15 break. Let's go off the record.
 16 THE VIDEOGRAPHER: We are going off record.
 17 Time now is 2:33 p.m.
 18 (Recess from 2:33 p.m. to 2:46 p.m.)
 19 THE VIDEOGRAPHER: Back on the record. It's
 20 2:46 p.m.
 21 E X A M I N A T I O N (Continuing)
 22 BY MR. WEAVER:
 23 Q. Mayor, I'd like to go back to Exhibit 1, which
 24 is your emergency order that you signed on June 30,
 25 2020.

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1 A. Okay. I've got it up. Is there a particular
 2 place you want me to focus, Mr. Weaver?
 3 Q. The top of Page 2.
 4 A. Okay.
 5 Q. And at the end of the first whereas clause,
 6 there is a -- it says, "The City has reasonably
 7 facilitated an ongoing [sic] of First Amendment rights
 8 and demonstrations by," colon, and then there's like six
 9 bullet points.
 10 Do you see that?
 11 A. I do see that.
 12 Q. Okay. What is your understanding about how
 13 those six -- those items listed in those six bullet
 14 points reasonably facilitated an ongoing exercise of
 15 First Amendment rights and demonstrations?
 16 A. Yeah, I -- great question. My understanding of
 17 the reason we had the whereas clause framed in this way
 18 is that -- and I may not be accurate about that, but my
 19 understanding was, is that to withstand legal challenge,
 20 should someone challenge our right to move people out of
 21 the Capitol Hill area because it was a First Amendment
 22 exercise, that we would have to show that we did try to
 23 support and facilitate legitimate exercise of First
 24 Amendment rights.
 25 But it was not -- we did not do those things

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1 only for those reasons, but we had to show that we did
 2 some things for those reasons in order to withstand a
 3 challenge.
 4 You know, we were -- during this period of
 5 time, the protests, as you know, the City of Seattle was
 6 taken to court by organizations challenging our -- for
 7 example, our actions in the protests and looking for an
 8 injunction. We also early, when we had the curfew in
 9 place, ACLU indicated that they might challenge that.
 10 So we're always cognizant of, if there would be
 11 a legal challenge to the order, what things have to be
 12 in there so that on its face it could withstand, you
 13 know, an injunctive relief or the like.
 14 So my understanding of the reason we put this
 15 in here is, we had to show and would have to show to a
 16 court that we had done some things to reasonably
 17 facilitate First Amendment exercise, as our requirement
 18 as a City. But those weren't the only reasons we were
 19 doing each of these items.
 20 Q. Okay. But each of those items had the effect
 21 of reasonably facilitating First Amendment activities;
 22 is that right?
 23 A. Correct. Among the -- some of those also had
 24 multiple purposes, but again, I think we had to show
 25 that we were taking reasonable steps to protect the

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1 First Amendment, and so that we demonstrated the things
2 we did before we made the decision that there was enough
3 of a reason to move everyone out of the area.

4 **Q. Okay. So in this paragraph, you were trying --**
5 **the City was trying to demonstrate that it had done some**
6 **things to support the CHOP; is that -- is that right?**

7 MR. HARRIGAN: Object to the form of the
8 question.

9 A. To -- to reasonably facilitate ongoing exercise
10 of First Amendment rights.

11 BY MR. WEAVER:

12 **Q. Okay. Can you -- could you elaborate on what**
13 **you mean by "reasonably facilitated"?**

14 A. So the protests that -- that were in and around
15 this area, depending on the time, included many people
16 who were not staying and residing in the area around Cal
17 Anderson.

18 You know, we had demonstrations that would
19 start in this area and then leave. We had people who
20 would come in and have a variety of ranges of types of
21 protests.

22 And so the First Amendment rights that we had
23 that we showed that we could reasonably facilitate on an
24 ongoing basis, it's my understanding is, before we could
25 take an action that essentially curtailed those First

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1 So having the ability both to have places for
2 people to go to the bathroom and places for them to wash
3 their hands was a really important public health
4 requirement during that period of time.

5 Same with garbage removal. You know, garbage
6 removal, both for the neighborhood and businesses around
7 that, but also because it, itself, can lead to other
8 public health issues, including the attraction of
9 vectors and the like.

10 So part of this was to make sure that we could,
11 during a global health pandemic, when you had all those
12 people there, that you had real hygiene and sanitation
13 alternatives, and particularly it was really important
14 at this period of time because, you know, in that area,
15 in a normal time, there are dozens and dozens of
16 businesses that are open that customers or others can
17 use their restrooms, or can go in and wash their hands.
18 Most of those businesses were closed down, and with
19 them, their facilities were closed down.

20 So I -- I believe that we determined, as a
21 City, it was important for us, from a public health
22 standpoint, to be able to provide those kinds of
23 services.

24 **Q. Okay. So were you aware in the first week or**
25 **so of CHOP that the City moved more than 20**

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1 Amendment rights in a geographic area of the city, that
2 we had attempted a range of things to facilitate First
3 Amendment rights, and that there were countervailing
4 reasons and -- that were significant enough that we
5 literally could curtail First Amendment rights in a
6 geographic area of the city.

7 **Q. Okay.**

8 **What was your understanding, going to the first**
9 **bullet point on -- under this clause that we were just**
10 **talking about, providing basic hygiene, water, litter**
11 **and garbage removal and electricity, what was your**
12 **understanding, during the weeks prior to this, as far as**
13 **what was being provided in terms of hygiene, water,**
14 **litter and garbage removal and electricity?**

15 A. So my understanding is, in and around that
16 time, as I said, you had the people who were both
17 staying and essentially residing in the Cal Anderson
18 area; you had other protesters coming; you had members
19 of the public coming.

20 We were in the middle of a global pandemic.
21 Earlier in that pandemic, we had to clear a homeless
22 encampment because of a hepatitis outbreak. And so
23 sanitation services were really critical to be providing
24 where you knew that there was going to be a significant
25 number of people.

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1 **porta-potties to the area described in the emergency**
2 **order as the Cal Anderson Park area for use by any**
3 **member of the public?**

4 A. I didn't have a number, and given that there
5 were thousands of people in and around that area, it
6 would not have surprised me to have 20.

7 **Q. But you were aware that some porta-potties had**
8 **been moved to that area --**

9 A. Right.

10 **Q. -- to support what was going on there; is that**
11 **right?**

12 A. I think to address the public health needs of
13 the reality of the people. So when you have thousands
14 of people there, and businesses are closed and there's
15 no bathrooms, we believed it was a public health factor
16 that we really needed to have sufficient places for
17 people to go to the bathroom and hygiene centers.

18 We'd done that in other parts of the city
19 throughout the pandemic, where we would bring in hygiene
20 stations and porta-potties where there was a confluence
21 of individuals, sometimes around encampments, sometimes
22 around other things.

23 But yes, I knew that we had brought in
24 sanitation services, and I really relied upon Mami Hara
25 and others to assess what was going on on the ground and

50 (Pages 197 to 200)

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what we needed to address to make sure, for example, that you didn't have the buildup of the things that would lead to more public health issues, you know, human waste, people not washing their hands. That could be really detrimental.

So I relied upon her judgment, and if it's -- if that's the number she moved in, I assumed it was done after a proper assessment of kind of, this is how many people there are. We need to get more services in there.

Q. Okay. Were you also aware during the first week or -- of the -- of CHOP that there was also -- there were washing stations and running water made available to people who were living or visiting the area?

A. I wasn't at that time, but again, that would be consistent with, you know, the need for the hygiene. You know, having running water or other places, sanitation facilities for people to wash their hands was really important during this time period.

I mean, always important, obviously, but even more important, given that we're in the global pandemic, and we'd had an experience of there being an outbreak of hepatitis not too long before that.

Q. So you were aware there were going to be

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various things to support hygiene, including porta-potties provided to the Cal Anderson Park area in the first week or so of CHOP; is that right?

A. I don't -- I can't say that I remember what the timing was, but I know that they were making an assessment, given that we had that volume of people who were there, and the hundreds of people who were coming in and out of there. And the businesses were closed. There wasn't access to restrooms.

During some period of time, my recollection is that the bathrooms in Cal Anderson themselves were broken, and so they -- the people, Mami Hara and others, thought it really important that we be able to provide some places for people to go to the bathroom and places for them to wash their hands.

Q. Okay. And were you also aware, in the first week or ten days of CHOP, that there were garbage services being provided to people in the park, including dumps- -- a public dumpster, as well as pickup of garbage bag piles?

A. I can't say the specific date that I learned of it, what it is, but I think there -- from very early on, really relied on Mami Hara and others to make an assessment.

And again, when you have that many people in an

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area, you want to augment the services. And I -- I think that there was that kind of evaluation before too, when we had, you know, all the protesters in and around Cal Anderson, leading up to the 8th.

Q. Okay. And how about electricity? What do you understand -- what was the electricity that was provided?

A. That, I'm less familiar with, the electricity. I know that there was a -- there was a lighting issue, that people felt that having more lighting might -- might create a -- a safer climate, but I'm not sure of all the electricity issues.

Q. Going to the second and fourth bullet points, temporarily allowing obstructions of public parks, streets, and sidewalks, and modifying streets and pedestrian access routes, I take it you knew from your visits and from your meetings during the first week of CHOP that there were some obstructions of public parks, streets, and sidewalks; is that accurate?

A. Yes, absolutely.

Q. And that those blockages required the modification of street access and pedestrian access routes?

A. That's correct. And I think that that's -- that's not an uncommon thing for us when we're

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evaluating protests of any size and marches of any size. There will be times when streets are closed, sidewalks are closed as the event occurs, both planned and unplanned.

Q. Sure. Do you know whether there was any attempt to work with the protesters to get a demonstration or public park permit for what was going on in CHOP?

A. I don't know the answer to that.

Q. All right. Going to the third bullet point, "Modifying SPD and SFD response protocols to meet public safety needs to the extent possible within this area."

What were you -- what were you aware of, in the first week or two of CHOP, regarding modifications to the SPD and SFD response protocols in the Cal Anderson Park area?

A. Let me -- I -- my answer to the last one may have been a little incomplete. I just want to make sure that it's complete because you asked about the -- was there any attempt to have them get a permit, I believe.

And just want to make clear that, that that's not uncommon, that they don't -- since I've been mayor, there have been numerous protests that do not have permits.

And my understanding of the law is that because

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Hunters Capital, LLC v. City of Seattle

Mayor Jenny A. Durkan

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4:55 p.m.

(Deposition concluded at 4:55 p.m.)
 (Reading and signing was requested
 pursuant to FRCP Rule 30(e).)

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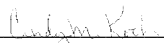
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C E R T I F I C A T E

STATE OF WASHINGTON
 COUNTY OF PIERCE

I, Cindy M. Koch, a Certified Court Reporter in
 and for the State of Washington, do hereby certify that
 the foregoing transcript of the deposition of Jenny A.
 Durkan, having been duly sworn, on December 8, 2021, is
 true and accurate to the best of my knowledge, skill and
 ability.

IN WITNESS WHEREOF, I have hereunto set my hand
 and seal this 29th day of December, 2021.


 CINDY M. KOCH, CCR, RPR, CRR



My commission expires:
 JUNE 9, 2022

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